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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,537	02/09/2004	Brian Hernacki	SYMAP041	6706

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EXAMINER	
RYMAN, DANIEL J	

ART UNIT	PAPER NUMBER
2616	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/775,537	HERNACKI, BRIAN	
	Examiner	Art Unit	
	DANIEL J. RYMAN	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16 and 18-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16 and 18-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/7/2008 has been entered.

2. Applicant's arguments filed 4/7/2008 have been fully considered but they are not persuasive. Applicant asserts that Ponchon teaches away from expanded buffering because Ponchon teaches discarding fragments when anomalies are detected. Response: pp. 13 and 14. While Examiner agrees that references cannot be combined where one of the references teaches away from the combination, Examiner asserts that to teach away from a proposed combination a reference must do more than merely set forth an alternative to the combination. For example, when providing a parenthetical for *In re Grasselli*, section 2145 of the MPEP states that the proposed combination was "expressly excluded" by one of the references. MPEP § 2145(X) (citing to *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). By analogy, for Ponchon to teach away from the proposed combination, Ponchon would have to expressly state that expanded buffering should not be used when dealing with anomalous fragments. No such teaching is present in Ponchon. As such, Examiner asserts that Ponchon does not teach away from using expanded buffering to deal with anomalous fragments.

3. Applicant also asserts that Cantrell fails to disclose "expanded buffering of fragments contained in said fragmented network traffic," as called for in claim 1, because Cantrell discloses

assembling fragments into "normalized" packets. Response: pp. 13-14. Examiner respectfully disagrees that Cantrell fails to disclose expanded buffering for the fragments. Examiner submits that by using expanded buffering to store the "normalized" packet Cantrell also uses expanded buffering to store the fragments because the packet that is assembled from the fragments also necessarily will contain the fragments. Therefore, Examiner maintains that Cantrell discloses "expanded buffering of fragments contained in said fragmented network traffic".

4. In view of the foregoing, Examiner maintains that the claims are obvious in view of the cited prior art.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 21 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 21 recites: "A computer program product". As such, claim 21 claims a program, per se. A program, per se, is deemed to be "functional descriptive material" that has not been claimed in a manner that imparts functionality when employed as a computer component, such that the claims are currently directed to an abstract idea. *See* MPEP § 2106.01. Current PTO practice requires computer programs to be claimed using the following format: "A computer-readable medium encoded with computer instructions which when executed cause the computer to perform a method, the method comprising the steps of". Thus, the claim should be directed to the computer readable medium, rather than the program stored on the computer readable medium.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-16 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pochon et al. (US 2003/0048793), of record, in view of Cantrell et al. (US 2004/0093513).

9. Regarding claims 1, 20, and 21, Pochon discloses a method for assembling fragmented network traffic, comprising: detecting in the fragmented network traffic an anomaly that could result in two or more fragments contained in the fragmented network traffic being reassembled at a monitoring node to obtain a reassembled data flow that is different than a corresponding data as reassembled at a destination node to which the fragmented network traffic is addressed (¶¶ [0089]-[0093], esp. ¶ [0093], where an NIDS checks to determine whether there is a conflict between previously received fragments and a currently received fragment, i.e. check to determine if there is an anomaly, see also ¶¶ [0022]-[0026]); and performing further processing on the fragmented network traffic having the anomaly (¶ [0093], where the fragmented network traffic having the anomaly is discarded).

Pochon does not expressly disclose initiating in response to detecting said anomaly expanded buffering of fragments contained in said fragmented network traffic. Rather, Pochon discloses that in response to detecting an anomaly the fragments are discarded (¶ [0093]). Cantrell teaches, in a system for identifying anomalies in fragmented network traffic (¶ [0026]), that if a "suspicious" packet is identified, i.e. an anomaly is identified, then the packet is set aside

for a more careful examination (¶ [0057]), where this permits the system to quickly identify suspicious packets at line rate and then take extra time to detect whether the suspicious packet is benign or malicious to permit the return of benign packets to the transmission line (¶ [0061], see also ¶ [0063]). In addition, Cantrell discloses that the more careful examination includes the use of expanded buffering (¶ [0065], where the more careful examination includes comparing a copy of the suspicious packet to various signatures to determine if the suspicious packet is malicious, see also ¶¶ [0026] and [0062]- [0065], which discloses that the intrusion detection system can consider all options). It is implicit that this "expanded buffering" includes the fragments since the fragments are used to reconstruct the data stream. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to initiate, in response to detecting said anomaly, expanded buffering of fragments contained in the fragmented network traffic to allow a more careful examination of the suspicious packet to determine whether the packet is benign or malicious.

10. Regarding claims 2 and 18, Pochon in view of Cantrell discloses that detecting an anomaly comprises determining that said two or more fragments overlap (Pochon: ¶¶ [0022]-[0026], see also Cantrell: ¶ [0026]).

11. Regarding claim 3, Pochon in view of Cantrell discloses that determining that said two or more fragments overlap comprises reading a header value associated with one of the fragments (Pochon: ¶¶ [0091]-[0092]).

12. Regarding claim 4, Pochon in view of Cantrell discloses that the header value comprises an offset value (Pochon: ¶¶ [0091]-[0092]).

13. Regarding claims 5 and 19, Pochon in view of Cantrell discloses that detecting an anomaly comprises determining that said two or more fragments overlap and that at least two of said fragments comprise different data for an overlapping portion of said fragments (Pochon: ¶¶ [0022]-[0026], see also Cantrell: ¶ [0026]).

14. Regarding claim 6, Pochon in view of Cantrell discloses that performing further processing comprises determining configuration information associated with said destination node (Cantrell: ¶ [0065], where a database of information pertaining to the various machines on the network is located in the intrusion detection system, see also Cantrell: ¶¶ [0026] and [0062]-[0065], where the intrusion detection system determines all options and looks at various protocols when processing the packet).

15. Regarding claim 7, Pochon in view of Cantrell does not expressly disclose that determining configuration information comprises querying the destination node; however, Pochon in view of Cantrell does disclose that determining configuration information comprises gathering such information in any known ways (Cantrell: ¶ [0065]). Examiner takes official notice that querying a node is a known way to gather information on the node. As such, it would have been obvious to one of ordinary skill in the art at the time of the invention to query a destination node since this is a known way to gather information on a node.

16. Regarding claim 8, Pochon in view of Cantrell discloses that determining configuration information comprises querying an information base (Cantrell: ¶ [0065]).

17. Regarding claim 9, Pochon in view of Cantrell discloses that performing further processing comprises reassembling the fragmented network traffic (Pochon: ¶¶ [0039]-[0040])

to generate more than one variant of the reassembled data flow (Cantrell: ¶¶ [0026] and [0062]-[0065]).

18. Regarding claim 10, Pochon in view of Cantrell discloses processing the anomaly to determine whether the fragmented network traffic is associated with a threat (Cantrell: ¶¶ [0065]).

19. Regarding claim 11, Pochon in view of Cantrell discloses performing an action on the fragmented network traffic based on whether the fragmented network traffic is associated with a threat (Cantrell: ¶ [0063]).

20. Regarding claim 12, Pochon in view of Cantrell discloses discarding at least a portion of the fragmented network traffic if the fragmented network traffic is associated with a threat (Cantrell: ¶ [0063]).

21. Regarding claim 13, Pochon in view of Cantrell discloses copying one or more fragments comprising the fragmented network traffic to a buffer (Cantrell: ¶ [0065], where it is implicit that the traffic is copied to a buffer).

22. Regarding claim 14, Pochon in view of Cantrell discloses that performing further processing comprises sending an alert (Cantrell: ¶ [0063]).

23. Regarding claim 15, Pochon in view of Cantrell discloses that performing further processing comprises determining whether the fragmented network traffic should be blocked (Cantrell: ¶ [0063]).

24. Regarding claim 16, Pochon in view of Cantrell discloses that performing further processing comprises determining whether the fragmented network traffic should be forwarded to the destination node (Cantrell: ¶ [0063]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL J. RYMAN whose telephone number is (571)272-3152. The examiner can normally be reached on Mon.-Fri. 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild can be reached on (571)272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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